

**SOUTH DAKOTA DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES
JOE FOSS BUILDING
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA 57501-3181**

**AUTHORIZATION TO DISCHARGE UNDER THE
SURFACE WATER DISCHARGE SYSTEM**

In compliance with the provisions of the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota (ARSD), Chapters 74:52:01 through 74:52:11,

John Morrell and Company

is authorized to discharge from its meat packing facility located in Sioux Falls in Section 9, Township 101 North, Range 49 West (Latitude 43° 33' 55", Longitude 96° 43' 12")

to the Big Sioux River,

in accordance with discharge point(s), effluent limits, monitoring requirements and other conditions set forth herein. Authorization for discharge is limited to those outfalls specifically listed in the permit.

This permit shall become effective **April 1, 2000.**

This permit and the authorization to discharge shall expire at midnight, **March 31, 2005.**

Signed this 29th day of March, 2000.



Authorized Permitting Official

Nettie H. Myers
Secretary
Department of Environment and Natural Resources

Amended: July 5, 2000
Effective: August 1, 2000

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I. EFFLUENT LIMITS AND MONITORING REQUIREMENTS

A. Definitions.

1. The "30-day (and monthly) average," other than for fecal coliform bacteria and total coliform bacteria, is the arithmetic average of all samples collected during a consecutive 30-day period or calendar month, whichever is applicable. Geometric means shall be calculated for fecal coliform bacteria and total coliform bacteria. The calendar month shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms.
2. The "7-day (and weekly) average," is the arithmetic mean of all samples collected during a consecutive 7-day period or calendar week, whichever is applicable. The 7-day and weekly averages are applicable only to those effluent characteristics for which there are 7-day average effluent limits. The calendar week which begins on Sunday and ends on Saturday, shall be used for purposes of reporting self-monitoring data on discharge monitoring report forms. Weekly averages shall be calculated for all calendar weeks with Saturdays in the month. If a calendar week overlaps two months (i.e., the Sunday is in one month and the Saturday in the following month), the weekly average calculated for that calendar week shall be included in the data for the month that contains the Saturday.
3. "Daily Maximum" ("Daily Max.") is the maximum value allowable in any single sample or instantaneous measurement.
4. "Composite samples" shall be flow proportioned. The composite sample shall, as a minimum, contain at least four (4) samples collected over the compositing period. Unless otherwise specified, the time between the collection of the first sample and the last sample shall not be less than six (6) hours nor more than 24 hours. Acceptable methods for preparation of composite samples are as follows:
 - a. Constant time interval between samples, sample volume proportional to flow rate at time of sampling;
 - b. Constant time interval between samples, sample volume proportional to total flow (volume) since last sample. For the first sample, the flow rate at the time the sample was collected may be used;
 - c. Constant sample volume, time interval between samples proportional to flow (i.e., sample taken every "X" gallons of flow); and,
 - d. Continuous collection of sample, with sample collection rate proportional to flow rate.

A. Definitions (Continued)

5. A "grab" sample, for monitoring requirements, is defined as a single "dip and take" sample collected at a representative point in the discharge stream.
6. An "instantaneous" measurement, for monitoring requirements, is defined as a single reading, observation, or measurement.
7. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limits because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
8. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
9. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
10. "Secretary" means the Secretary of the South Dakota Department of Environment and Natural Resources, or authorized representative.
11. "SDDENR" means the South Dakota Department of Environment and Natural Resources.
12. "Sewage Sludge" is any solid, semi-solid or liquid residue that contains materials removed from domestic sewage during treatment. Sewage sludge includes, but is not limited to, primary and secondary solids and sewage sludge products.
13. "Acute Toxicity" occurs when 50 percent or more mortality is observed for either species (See Part I.C.) at any effluent concentration. Mortality in the control must simultaneously be 10 percent or less for the effluent results to be considered valid.
14. "Chronic Toxicity" occurs when the survival, growth, or reproduction, as applicable, for either test species, at the effluent dilution(s) designated in this permit (see Part I.C.), is significantly less (at the 95 percent confidence level) than that observed for the control specimens.
15. "IC25" (inhibition concentration) is a point estimate of the toxicant concentration that would cause a 25% reduction in a nonlethal biological measurement of the test organism, such as reproduction or growth.
16. "NOEC" (no observed effect concentration) is the highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organism at a specific time of observation. Determined using hypothesis testing.

B. Description of Discharge Points

The authorization to discharge provided under this permit is limited to those outfalls specifically designated below as discharge locations. Discharges at any location not authorized under a SWD permit is a violation of the South Dakota Water Pollution Control Act and could subject the person{s} responsible for such discharge to penalties under Section 34A-2-75 of the Act. Knowingly discharging from an unauthorized location or failing to report an unauthorized discharge within a reasonable time from the first learning of an unauthorized discharge could subject such person to criminal penalties as provided under the South Dakota Water Pollution Control Act.

Outfall

Serial Number

001

Description of Discharge Point

Any discharge from the wastewater treatment facility to the Big Sioux River, approximately 1/8 mile above the Big Sioux Diversion Ditch (Latitude 43° 34' 00", Longitude 96° 43' 11")

C. Specific Limits and Self-Monitoring Requirements1. Effluent Limits

Effective immediately and lasting through the life of this permit, the quality of effluent discharged by the facility shall, as a minimum, meet the limits as set forth below:

Effluent Characteristic	Effluent Limit	
	30-Day Average ¹	Daily Maximum ¹
BOD ₅ , lbs/day		
✓ Spring (April - May)	1000	1,849
✓ Summer (June - August)	667	1,849
✓ Fall (September - October)	1000	1,849
✓ Winter (November - March)	1000	1,849
Total Suspended Solids, lbs/day	1,100	2,200
✓ Fecal Coliform, no./100 mL ²	200 (May 1 - Sept. 30)	400 (Year-round)
✓ Ammonia-Nitrogen, lbs/day (as N)		
✓ Spring (April - May)	70	123
✓ Summer (June - August)	58	102
✓ Fall (September - October)	75	131
Winter (November - March)	163	285
✓ Dissolved Oxygen, mg/L		
Spring (April - May)		5.0 ³
Summer (June - August)	N/A	5.0 ³
Fall (September - October)		5.0 ³
Winter (November - March)		5.0 ³
✓ Total Residual Chlorine, mg/L ⁴ (applicable only if effluent is chlorinated)	N/A	0.019
✓ Oil and grease	352 lbs/day	10 mg/L
✓ The pH of the discharge shall not be less than 6.5 units nor greater than 9.0 units in any sample.		
✓ The discharge shall not impart a visible film or sheen to the surface of the water or to the adjoining shorelines.		
✓ There shall be no Chronic Toxicity, as described in Part I.C.3.		

¹ See Definitions, Part I.A.

² Fecal Coliform organisms from May 1 to September 30 may not exceed a concentration of 200 per 100 milliliters as a geometric mean based on a minimum of 5 samples obtained during separate 24-hour periods for any 30-day period, and they may not exceed this value in more than 20 percent of the samples examined in this 30-day period. They may not exceed 400 per 100 milliliters in any one sample. This limit shall apply year-round.

³ The dissolved oxygen limit applies as a daily minimum.

⁴ Total residual chlorine measurements below 0.05 mg/L shall not be considered violations of the total residual chlorine limit.

C. Specific Limits and Self-Monitoring Requirements

2. Self-Monitoring Requirements - **Outfall 001**

As a minimum, upon the effective date of this permit, the following parameters shall be monitored at the frequency and with the type of measurement indicated; samples or measurements shall be representative of the volume and nature of the monitored discharge. If no discharge occurs during the entire monitoring period, it shall be stated on the Discharge Monitoring Report Form (EPA No. 3320-1) that no discharge or overflow occurred.

Effluent Characteristic	Frequency	Reporting Values ¹	Sample Type ¹
Rate of Discharge, MGD	Continuous	daily maximum; 30-day average	Instantaneous
Oil and Grease, mg/L	Daily	presence or absence of sheen; daily maximum	Visual/Grab ²
Oil and Grease, mg/L	Weekly	daily maximum	Grab ²
Oil and Grease, lbs/day ⁸	Monthly	30-day average	Calculated
pH, standard units ⁷	Daily	daily minimum; daily maximum	Instantaneous ³
Total Residual Chlorine, mg/L (Required only if the effluent is chlorinated)	Daily	daily maximum ⁴	Grab
Dissolved Oxygen, mg/L	Five times per week	daily minimum	Grab
Five-Day Biochemical Oxygen Demand, mg/L	Five times per week	daily maximum; 30-day average	Composite
Five-Day Biochemical Oxygen Demand, lbs/day ⁸	As sample results are received	daily maximum; 30-day average	Calculated
Total Suspended Solids, mg/L	Five times per week	daily maximum; 30-day average	Composite
Total Suspended Solids, lbs/day ⁸	As sample results are received	daily maximum; 30-day average	Calculated

¹ See definitions, Part I.A. of permit.

² The presence or absence of an oil sheen shall be visually monitored. In the event that an oil sheen or floating oil is observed during discharge, grab samples shall be taken immediately, analyzed and reported. At a minimum, a sample shall be taken and analyzed weekly for oil and grease.

³ pH is to be taken within 15 minutes of sample collection with a pH meter. The pH meter must be capable of simultaneous calibration to two points on the pH scale that bracket the expected pH and are approximately three standard units apart. The pH meter must read to 0.01 standard units and be equipped with temperature compensation adjustment.

⁴ SDDENR considers the analytical detection limit for total residual chlorine to be 0.05 mg/L and for ammonia to be 0.01 mg/L. If the effluent value is less than the analytical detection limit, "0" shall be used for reporting and averaging purposes.

C. Specific Limits and Self-Monitoring Requirements

2. Self-Monitoring Requirements - **Outfall 001**

Effluent Characteristic	Frequency	Reporting Values ¹	Sample Type ¹
Fecal Coliform, no./100 mL	Five times per week ⁵	daily maximum; 30-day geometric mean	Grab
Water Temperature, °C ⁷	Five times per week	daily maximum; 30-day average	Instantaneous ⁶
Ammonia-Nitrogen, mg/L (as N) ⁷	Three times per week	daily maximum; ⁴ 30-day average	Composite
Ammonia-Nitrogen, lbs/day (as N) ⁸	As sample results are received	daily maximum; 30-day average	Calculated
Nitrates, mg/L (as N)	Monthly	daily maximum; 30-day average	Grab or Composite
Five-Day Carbonaceous Biochemical Oxygen Demand (CBOD ₅), mg/L	Monthly	daily maximum; 30-day average	Grab or Composite
Chronic Whole Effluent Toxicity	Quarterly ⁹	see Part I.C.3	Grab

⁵ For fecal coliform, all samples collected in a 30-day period shall be used in determining the geometric mean.

⁶ The water temperature of the effluent shall be taken as a field measurement at the time of sampling. Measurement shall be made with a mercury-filled, or dial type thermometer, or a thermistor. Readings shall be reported to the nearest whole degree Celsius.

⁷ The pH and temperature of the effluent shall be determined during when ammonia samples are collected.

⁸ Daily loading (lbs/day) shall be calculated by multiplying the discharge flow rate (million gallons per day) by the measured pollutant concentration (mg/L) times 8.34 (a conversion factor). 30-day average loading (lbs/day) shall be calculated by averaging the computed daily loadings (lbs/day).

⁹ The permittee shall obtain and analyze a valid chronic whole effluent toxicity sample at least once during each calendar quarter.

Amended: July 5, 2000
Effective: August 1, 2000

C. Specific Limits and Self-Monitoring Requirements

3. Whole Effluent Toxicity Testing - Chronic Toxicity

Effective immediately, the permittee shall, at least once each quarter, conduct chronic short-term toxicity tests on the final effluent. If chronic toxicity is detected, an additional test shall be conducted within two weeks of the date of when the permittee learned of the test failure. The need for any additional samples shall be determined by the Secretary.

The chronic toxicity tests shall be conducted in accordance with the procedures set out in the latest revision of "Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms", EPA/600-4-91-002, July 1994, and the "Region VIII EPA NPDES Chronic Test Conditions - Whole Effluent Toxicity". In case of conflicts, the Region VIII procedure will prevail. Test species shall consist of *Ceriodaphnia dubia* and *Pimephales promelas* (fathead minnows). A multi dilution test consisting of five concentrations and a control is required. The Secretary or EPA may require both species to be tested each quarter if effluent monitoring results indicate there is a concern. If test acceptability criteria is not met for control survival, growth, or reproduction, the test shall be considered invalid.

Chronic toxicity occurs when, during a chronic toxicity test, the 25% inhibition concentration (IC_{25}) calculated on the basis of test organism survival and growth or survival and reproduction, is less than or equal to the following effluent concentrations:

Season	Chronic WET Test IC_{25}
Spring (Apr - May)	36%
Summer (Jun - Aug)	36%
Fall (Sep - Oct)	48%
Winter (Nov - Mar)	47%

Test results shall be reported along with the Discharge Monitoring Report (DMR) submitted for the end of the calendar period during which the whole effluent test was run (e.g. results for the calendar quarter ending March 31 shall be reported with the DMR due April 28, with the remaining reports submitted with DMRs due each July 28, October 28, and January 28). Monthly test results shall be reported along with the DMR submitted for that month. The format for the report shall be consistent with the latest revision of the "Region VIII Guidance for Chronic Whole Effluent Reporting", and shall include all the physical and chemical testing as specified.

If the results for one year (four consecutive quarters) of whole effluent testing indicate no chronic toxicity, the permittee may request the permit issuing authority to allow the permittee to reduce testing frequency, and/or reduce testing to one species on an alternating basis, and/or modify testing to the acute test program. The permit issuing authority may approve, partially approve, or deny the request based on results and other available information. If approval is given, the modification will take place without a public notice.

C. Specific Limits and Self-Monitoring Requirements4. Toxicity Reduction Evaluation (TRE)
Toxicity Identification Evaluation (TIE)

Should acute toxicity and/or chronic toxicity be detected in the permittee's discharge, a TIE-TRE shall be undertaken by the permittee to establish the cause of the toxicity, locate the source(s) of the toxicity, and develop control of, or treatment for the toxicity. Failure to initiate, or conduct an adequate TIE-TRE, or delays in the conduct of such tests, shall not be considered a justification for noncompliance with the whole effluent toxicity limits contained in Part I.C.1. of this permit. A TRE plan needs to be submitted to the permitting authority within 45 days after confirmation of the continuance of effluent toxicity.

5. Inspection Requirements

The permittee shall inspect its wastewater treatment facility on at least a **daily** basis. The inspection shall be conducted to determine if proper operation and maintenance procedures are being undertaken at the wastewater treatment facility. The permittee shall maintain a notebook recording information obtained during the inspection. At a minimum, the notebook shall include the following:

- a. Date and time of the inspection;
- b. Name of the inspector(s);
- c. Identification of operational problems and/or maintenance problems;
- d. Recommendations, as appropriate, to remedy identified problems;
- e. A brief description of any actions taken with regard to problems identified; and
- f. Other information, as appropriate.

The permittee shall maintain the notebook in accordance with proper record-keeping procedures and shall make the notebook available for inspection, upon request, by the Secretary or the U.S. Environmental Protection Agency.

II. MONITORING, RECORDING AND REPORTING REQUIREMENTS

- A. Representative Sampling. Samples taken in compliance with the monitoring requirements established under Part I shall be collected from the effluent stream prior to discharge into the receiving waters. Samples and measurements shall be representative of the volume and nature of the monitored discharge.
- B. Monitoring Procedures. Monitoring must be conducted according to test procedures approved under ARSD 74:52:03:06, a.b.r. 40 CFR, Part 136, unless other test procedures have been specified in this permit.
- C. Penalties for Tampering. Any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a Class 1 misdemeanor. In addition to a jail sentence authorized by SDCL 22-6-2, a Class 1 misdemeanor imposed by SDCL, Chapter 34A-2, is subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, for damages to the environment of this state, or both.
- D. Reporting of Monitoring Results. Effluent monitoring results obtained during the previous month shall be summarized and reported on a Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed reporting period. If no discharge occurs during the reporting period, "no discharge" shall be reported. Whole effluent toxicity (biomonitoring) results must be reported on the most recent version of EPA Region VIII's Guidance For Whole Effluent Reporting. Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with the Signatory Requirements (see Part IV), and submitted to the Secretary and EPA at the following addresses:

original to: South Dakota Department of
Environment and Natural Resources
Surface Water Quality Program
Joe Foss Building
523 East Capitol Avenue
Pierre, South Dakota 57501-3181

copy to: United States Environmental Protection Agency
Region VIII
Planning and Targeting Program (ENF-PT)
999 18th Street, Suite 500
Denver, Colorado 80202-2466

- E. Compliance Schedules. Reports of compliance or noncompliance with, or any progress reports on interim and final requirements contained in any Compliance Schedule of this permit shall be submitted no later than 14 days following each schedule date.
- F. Additional Monitoring by the Permittee. If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under ARSD 74:52:03:06, a.b.r. 40 CFR 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

G. Records Contents. Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The initials or name(s) of the individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The time analyses were initiated;
5. The initials or name(s) of individual(s) who performed the analyses;
6. References and written procedures, when available, for the analytical techniques or methods used; and,
7. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

H. Retention of Records. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Secretary at any time. Data collected on site, copies of Discharge Monitoring Reports, and a copy of this permit must be maintained on site during the duration of activity at the permitted location.I. Twenty-four Hour Notice of Noncompliance Reporting.

1. The permittee shall report any noncompliance which may endanger health or the environment as soon as possible, but no later than twenty-four (24) hours from the time the permittee first became aware of the circumstances. The report shall be made to the State of South Dakota at (605) 773-3231 and the EPA, Region VIII, Emergency Response Branch at (303) 293-1788.
2. The following occurrences of noncompliance shall be reported by telephone to the Secretary at (605) 773-3351 by the first workday (8:00 a.m. - 4:30 p.m. Central Time) following the day the permittee became aware of the circumstances:
 - a. Any unanticipated bypass which exceeds any effluent limit in the permit (See Part III.G., Bypass of Treatment Facilities.);
 - b. Any upset which exceeds any effluent limit in the permit (See Part III.H., Upset Conditions.); or,
 - c. Violation of a maximum daily discharge limit for any of the pollutants listed in the permit to be reported within 24 hours.

I. Twenty-four Hour Notice of Noncompliance Reporting. (Continued)

3. A written submission shall also be provided within five days of the time that the permittee becomes aware of the circumstances. The written submission shall contain:
 - a. A description of the noncompliance and its cause;
 - b. The period of noncompliance, including exact dates and times;
 - c. The estimated time noncompliance is expected to continue if it has not been corrected; and,
 - d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
4. The Secretary may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Surface Water Quality Program, South Dakota Department of Environment and Natural Resources, Pierre, (605) 773-3351.
5. Reports shall be submitted to the addresses in Part II.D., Reporting of Monitoring Results.

J. Other Noncompliance Reporting. Instances of noncompliance not required to be reported within 24 hours shall be reported at the time that monitoring reports for Part II.D. are submitted. The reports shall contain the information listed in Part II.I.3.K. Inspection and Entry. The permittee shall allow the Secretary or EPA, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and,
4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

III. COMPLIANCE RESPONSIBILITIES

- A. Duty to Comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give the director advance notice of any planned changes at the permitted facility or of an activity which may result in permit noncompliance.
- B. Penalties for Violations of Permit Conditions. Any person who violates a permit condition shall, upon conviction, be punished by a Class 1 misdemeanor. In addition to a jail sentence authorized by SDCL 22-6-2, a Class 1 misdemeanor imposed by SDCL, Chapter 34A-2, is subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, for damages to the environment of this state. Except as provided in permit conditions on Part III.G., Bypass of Treatment Facilities and Part III.H., Upset Conditions, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.
- C. Need to Halt or Reduce Activity not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- D. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
- E. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. However, the permittee shall operate, as a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.
- F. Removed Substances. Collected screenings, grit, solids, sludges, or other pollutants removed in the course of treatment shall be disposed of in such a manner so as to prevent any pollutant from entering any waters of the state or creating a health hazard. Sludge/digester supernatant and filter backwash shall not be directly blended with or enter either the final plant discharge and/or waters of the State.
- G. Bypass of Treatment Facilities:
1. Bypass not exceeding limits. The permittee may allow any bypass to occur which does not cause effluent limits to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2. and 3. of this section.

G. Bypass of Treatment Facilities: (Continued)

2. Notice:

- a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 60 days before the date of the bypass.
- b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.I., Twenty-four Hour Reporting.

3. Prohibition of bypass.

- a. Bypass is prohibited and the Secretary may take enforcement action against a permittee for a bypass, unless:
 - (1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,
 - (3) The permittee submitted notices as required under paragraph 2. of this section.
- b. The Secretary may approve an anticipated bypass, after considering its adverse effects, if the Secretary determines that it will meet the three conditions listed above in paragraph 3.a. of this section.

H. Upset Conditions.

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limits if the requirements of paragraph 2. of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review (i.e., Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limits).

H. Upset Conditions. (Continued)

2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- a. An upset occurred and that the permittee can identify the cause(s) of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee submitted notice of the upset as required under Part II.I., Twenty-four Hour Notice of Noncompliance Reporting; and,
- d. The permittee complied with any remedial measures required under Part III.D., Duty to Mitigate.

3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants. The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Federal Clean Water Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

J. Changes in Discharge of Toxic Substances. Notification shall be provided to the Secretary as soon as the permittee knows of, or has reason to believe that any activity has occurred or will occur which would result in the discharge of a toxic pollutant, as defined in ARSD 74:52:01:01, which is not limited in the permit and if that discharge will exceed the highest of the following notification levels:

- (1) One hundred micrograms per liter (100 µg/L);
- (2) Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile;
- (3) Five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol;
- (4) One milligram per liter (1 mg/L) for antimony; or
- (5) Five (5) times the maximum concentration value reported for that pollutant in the permit application.

IV. GENERAL REQUIREMENTS

- A. Planned Changes. The permittee shall give notice to the Secretary as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could significantly change the nature or increase the quantity of pollutant discharged. This notification applies to pollutants which are not subject to effluent limits in the permit. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source (see ARSD, Chapter 74:52:01:01(30)).
- B. Anticipated Noncompliance. The permittee shall give advance notice to the Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- C. Permit Actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- D. Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.
- E. Duty to Provide Information. The permittee shall furnish to the Secretary, within a reasonable time, any information which the Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Secretary, upon request, copies of records required to be kept by this permit.
- F. Other Information. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Secretary, it shall promptly submit such facts or information.
- G. Signatory Requirements. All applications, reports or information submitted to the Secretary shall be signed and certified.
 - 1. All permit applications shall be signed as follows:
 - a. For a corporation: by a responsible corporate officer;
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
 - c. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

G. Signatory Requirements (Continued)

2. All reports required by the permit and other information requested by the Secretary shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above and submitted to the Secretary; and,
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)
3. Changes to authorization. If an authorization under paragraph IV.G.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph IV.G.2. must be submitted to the Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.
4. Certification. Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- H. Penalties for Falsification of Reports. Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a Class 1 misdemeanor. In addition to a jail sentence authorized by SDCL 22-6-2, a Class 1 misdemeanor imposed by SDCL, Chapter 34A-2, is subject to a criminal fine not to exceed ten thousand dollars per day of violation. The violator is also subject to a civil penalty not to exceed ten thousand dollars per day of violation, for damages to the environment of this state, or both.
- I. Availability of Reports. Except for data determined to be confidential under ARSD 74:52:02:17, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of SDDENR and EPA. Permit applications, permits and effluent data shall not be considered confidential.
- J. Oil and Hazardous Substance Liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the Federal Clean Water Act.

- K. Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.
- L. Severability. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
- M. Transfers. This permit may be automatically transferred to a new permittee if:
1. The current permittee notifies the Secretary at least 30 days in advance of the proposed transfer date;
 2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and,
 3. The Secretary does not notify the existing permittee and the proposed new permittee of his or her intent to modify, or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph 2. above.
- N. Reopener Provision. This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limits (and compliance schedule, if necessary), or other appropriate requirements if one or more of the following events occurs:
1. Water Quality Standards: The water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit.
 2. Total Maximum Daily Load: Additional controls in the permit are necessary to implement a total maximum daily load approved by the Secretary and/or EPA.
 3. Water Quality Management Plan: A revision to the current water quality management plan is approved and adopted which calls for different effluent limits than contained in this permit.

- O. Toxicity Limit-Reopener Provision. This permit may be reopened and modified (following proper administrative procedures) to include a new compliance date, additional or modified numerical limits, a new or different compliance schedule, a change in the whole effluent protocol, or any other conditions related to the control of toxicants if one or more of the following events occur:
1. Toxicity was detected late in the life of the permit near or past the deadline for compliance.
 2. The TRE results indicate that compliance with the toxic limits will require an implementation schedule past the date for compliance and the permit issuing authority agrees with the conclusion.
 3. The TRE results indicate that the toxicant(s) represent pollutant(s) that may be controlled with specific numerical limits, and the permit issuing authority agrees that numerical controls are the most appropriate course of action.
 4. Following the implementation of numerical controls on toxicants, the permit issuing authority agrees that a modified whole effluent protocol is necessary to compensate for those toxicants that are controlled numerically.
 5. The TRE reveals other unique conditions or characteristics which, in the opinion of the permit issuing authority, justify the incorporation of unanticipated special conditions in the permit.